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Attorneys for Defendants
BANK OF AMERICA, a Delaware corporation and
FIA CARD SERVICES, N.A.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

In re:	Bankruptcy Case No. 10-14154AJ
Douglas Duell	Chapter 7
Debtors	Adversary No. 10-14154AJ
_____ /	ANSWER TO COMPLAINT
Douglas Duell	<u>Status Conference Date:</u>
Plaintiffs,	Date: January 31, 2011
V.	Time: 2:00 p.m.
BANK OF AMERICA,	Place: 99 South "E" Street
Defendant	Santa Rosa, CA 95404
_____ /	

Defendant Bank of America ("BOA" or "Defendant") answers the Complaint of Douglas Duell as follows:

1. Answering Paragraphs 1,2,3,4,5, and 12 Defendant admits the allegations contained therein.

2. Answering Paragraphs 6,7,8,9, 10,11,13,14 and 15 Defendant denies the allegations contained therein.

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1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 (Lack of Service)

4 3. Plaintiff has failed to serve the Summons and Complaint in accordance
5 with the Federal Rules of Bankruptcy Procedure. As such, service was defective and the
6 Court does not have personal jurisdiction over Defendant.

7 **SECOND AFFIRMATIVE DEFENSE**

8 (Failure to State a Claim)

9 4. The purported causes of action alleged in the Complaint fail to state facts
10 sufficient to constitute a cause of action upon which relief can be granted.

11 **THIRD AFFIRMATIVE DEFENSE**

12 (Waiver)

13 5. Plaintiff has engaged in conduct and activities which constitute a waiver of
14 any alleged cause of action set forth in the Complaint.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 (Estoppel)

17 6. Plaintiff has engaged in conduct and activities which estop it from
18 asserting any claims for damages or for seeking any other relief against this answering
19 Defendant.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 (Mitigation of Damage)

22 7. Plaintiff failed to take reasonable steps to mitigate its damages, if any, with
23 respect to the matters averred in the Complaint.

24 DATED: 11/29/2010 LAW OFFICES OF BENJAMIN NACHIMSON

25
26 By: /s/ Benjamin Nachimson

27 Benjamin Nachimson
28 Attorneys for Defendant
BANK OF AMERICA

**PROOF OF SERVICE
(MAIL/OVERNIGHT EXPRESS DELIVERY/FACSIMILE)**

STATE OF CALIFORNIA)
) s.s.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 11755 Wilshire Boulevard, Los Angeles, California 90025

On November 29, 2010 I served the foregoing documents described as **ANSWER TO COMPLAINT**: on the interested parties in this action by placing the **copy** thereof enclosed in sealed envelopes addressed as follows:

Attorneys for Debtor

Edmund B. Dechant
Law Offices of Edmund B. Dechant
2 E St.
P.O. Box 1708
Santa Rosa, CA 95402-1708

☒ **BY MAIL.** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ **BY OVERNIGHT EXPRESS DELIVERY.** I deposited it in a box or other facility regularly maintained by ***, or delivered it to a driver or courier authorized by *** to receive documents, in an envelope designated by ***, with delivery fees provided for, and with delivery requested for the next business day.

Executed on November 29, 2010, at Los Angeles, California.

☒ **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Benjamin Nachimson

BENJAMIN NACHIMSON

Print Name

Signature